



National Association of Insurance Commissioners

July 15, 2009

The Honorable Henry Waxman
Chairman
Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Rangel
Chairman
Committee on Ways & Means
U.S. House of Representatives
Washington, DC 20515

The Honorable George Miller
Chairman
Committee on Education & Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Waxman, Rangel, and Miller:

We write on behalf of the National Association of Insurance Commissioners (NAIC) to comment on the recently released America’s Affordable Health Choices Act of 2009. The NAIC represents the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories, whose primary objective is to protect consumers and promote healthy insurance markets.

The states remain at the forefront in developing innovative solutions to the most pressing problems facing our health care system, such as the 2006 Massachusetts health reform law that is the template for the major proposals under consideration by Congress today. With the benefit of over 135 years of experience in regulating insurance markets and protecting consumers, we are pleased to offer the following comments on your legislation, as introduced on July 14, 2009.

We share your goal of enacting comprehensive legislation this year that will expand access to coverage, improve the quality of care, and restrain the rapid growth of health care spending in the United States, and we applaud your hard work to enact long-overdue reforms. Your bill is to be commended for extending guaranteed issue to the non-group health insurance market and ending the practice of rating policies based upon gender and health status which, when combined with an individual mandate and subsidies for individuals with lower incomes, will help extend coverage on an equitable basis to millions of Americans. In addition, we agree that health insurance exchanges will streamline the process of purchasing coverage and make meaningful comparisons of health insurance plans much easier.

State regulators strongly believe successful reform must be a State-Federal partnership and we accept the need for some federal standards, just as we did when we supported the enactment of HIPAA in 1996. We are concerned, however, to see unnecessary preemptions of state authority through the creation of the Health Choices Commissioner and the Health Choices Administration. This new federal agency would duplicate functions provided by state regulators, adding an additional layer of regulation and an additional layer of cost, without enhancing consumer protection. In fact, some of the most egregious failures of consumer protection in recent memory have occurred at the federal level. In the Medicare Advantage program, the preemption of state marketing laws and regulations left millions of seniors exposed to deceptive, fraudulent, and abusive sales tactics that would have been prevented had states been allowed to act. Furthermore, years after virtually every state has provided consumers with the right to independent, external review of claims denials, roughly 70 million Americans in federally-regulated, self-insured plans are still without a meaningful right to external appeal when their plan denies coverage of medically necessary treatments. Insurance Commissioners and their 13,000 employees have a proven track record of acting quickly to halt abusive practices, punish the insurers responsible, and make consumers whole. As coverage is extended to all Americans, the ability of state regulators to protect consumers must not be preempted or limited.

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It should also be noted, that important differences among the states make nationwide insurance regulations like those envisioned in your bill untenable. These differences—in health care delivery systems, demographics, rural and urban mix, economies, labor markets, etc.—necessitate different regulatory approaches from state to state. What has worked well in one state may not work in others. For this reason we urge you to allow the states greater flexibility in the creation and operation of health insurance exchanges. There are many important decisions that must be made in building an exchange, each of which must be made in light of market conditions in each state—a single federal blueprint is unlikely to be appropriate in every state.

We are also concerned that your legislation fails to provide any guidance to the Commissioner in drafting the new federal standards. Consequently, these standards are likely to be highly unstable, with dramatic changes in policy possible with each new administration. While we would prefer the preservation of state law governing marketing standards, network adequacy, grievance and appeals procedures, and other areas where state law is preempted under your proposal, if minimum national standards are necessary, we would recommend that state regulators, through the NAIC, be tasked with developing these standards. This is a proven approach that has been in use for many years in the regulation of Medicare Supplement insurance.

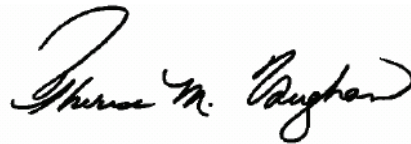
Finally, without an enforceable, effective requirement that all Americans obtain health insurance coverage, the access and rating reforms in your bill are likely to spur adverse selection that will dramatically increase the cost of coverage in many states. While your legislation does include an individual mandate, we are concerned that the penalty may not be sufficient to prevent this adverse selection. An individual earning \$45,000 per year would incur an annual penalty of approximately \$875. This individual may very well opt to pay this penalty in lieu of purchasing a policy that today carries an average annual premium of over \$4,700. If large numbers of people opt to pay the penalty rather than purchase coverage, adverse selection could result in many states, causing higher premiums for all consumers.

Thank you for the opportunity to comment on this legislation. As we noted above, we strongly support the goals of this bill and believe that together the Federal government and the States can help provide greater access to health insurance at more affordable premiums for the American people. We hope to work with you in the spirit of cooperation to improve this legislation and to enact comprehensive health reform this year. Please do not hesitate to call upon us if we can be of any further assistance.

Sincerely,



Roger Sevigny
NAIC President
New Hampshire Insurance Commissioner



Therese M. Vaughan, Ph.D.
CEO
National Association of Insurance Commissioners



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